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PTO/SB/21 (12-08)

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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

10

Application Number	10/678,048
Filing Date	10/2/2003
First Named Inventor	Diane Nerby
Art Unit	2171
Examiner Name	TBD

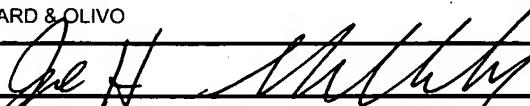
Attorney Docket Number

927-001

### ENCLOSURES (Check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Petition	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Terminal Disclaimer	<input type="checkbox"/> Return Receipt Postcard
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> Request for Refund	<input type="checkbox"/> Declaration of John W. Olivo, Jr., Esq.
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> Declaration of Jamie Reinhardt
<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		
	<b>Remarks</b>	

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	WARD & OLIVO		
Signature			
Printed name	Joe H. Shallenburger		
Date	12/30/2008	Reg. No.	37,937

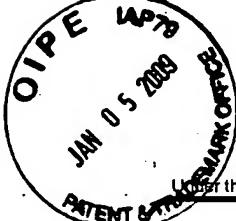
### CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature	
Typed or printed name	Chika Sakamoto
Date	12/30/2008

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

# FEE TRANSMITTAL

## For FY 2009

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$)

## Complete if Known

Application Number	10/678,048
Filing Date	10/02/2003
First Named Inventor	Diane Nerby
Examiner Name	TBD
Art Unit	2171
Attorney Docket No.	927-001

## METHOD OF PAYMENT (check all that apply)

 Check  Credit Card  Money Order  None  Other (please identify): \_\_\_\_\_

 Deposit Account Deposit Account Number: 23-0420 Deposit Account Name: WARD & OLIVO

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

 Charge fee(s) indicated below  Charge fee(s) indicated below, except for the filing fee

 Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17  Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

## FEE CALCULATION

## 1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	330	165	540	270	220	110	0
Design	220	110	100	50	140	70	
Plant	220	110	330	165	170	85	
Reissue	330	165	540	270	650	325	
Provisional	220	110	0	0	0	0	

## 2. EXCESS CLAIM FEES

## Fee Description

Each claim over 20 (including Reissues)

Fee (\$)	Small Entity Fee (\$)
52	26
220	110
390	195

Each independent claim over 3 (including Reissues)

Multiple dependent claims

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Small Entity	Fee (\$)	Fee Paid (\$)
- 20 or HP =	x	=		52	26	
HP = highest number of total claims paid for, if greater than 20.				220	110	

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)	Multiple Dependent Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x	=		390	195	0

HP = highest number of independent claims paid for, if greater than 3.

## 3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$270 (\$135 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	0

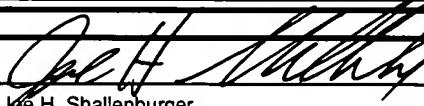
## 4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): \_\_\_\_\_

Fees Paid (\$)
0
0

## SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 37,937	Telephone 908-277-3333
Name (Print/Type)	Joe H. Shallenburger	Date 12-30-2008	

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Diane Nerby

Group Art Unit: 2171

Serial No.: 10/678,048

Examiner: TBD

Filed: October 2, 2003

Atty. Doc. No.: 927-001

For: **ONLINE EMPLOYEE ASSESSMENT AND MANAGEMENT PERFORMANCE SYSTEM AND METHOD**

Mail Stop Petition  
Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**COVER LETTER**

**Renewed Petition Under 37 C.F.R. 1.137(b)**

Enclosed is this petition and declarations in support of a renewed petition under 37 C.F.R. § 1.137(b) for unintentional delay. A proper response to the Notice to File Missing Parts of Nonprovisional Application was filed before the United States Patent and Trademark Office on November 12, 2007. Accordingly, the petition fee was paid on November 12, 2007.

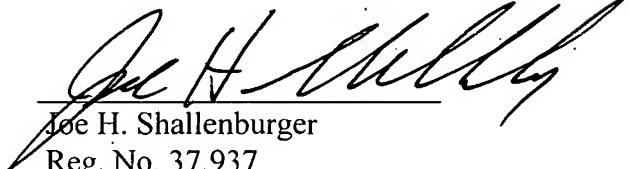
The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

Should any changes to the petition be deemed necessary to place the application in condition for allowance, the Commissioner is respectfully requested to contact the undersigned to discuss the same.

This Petition is believed to be timely filed. If a petition for extension of time and/or any other fees are required, the Patent and Trademark Office is specifically authorized to charge such fee to Deposit Account No. 23-0420 in the name of Ward & Olivo.

Date: December 30, 2008

Respectfully Submitted,

  
Joe H. Shallenburger  
Reg. No. 37,937  
Ward & Olivo  
283 Springfield Ave.  
Summit, NJ 07901  
908-277-3333



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Diane Nerby

Group Art Unit: 2171

Serial No.: 10/678,048

Examiner: TBD

Filed: October 2, 2003

Atty. Doc. No.: 927-001

For: ONLINE EMPLOYEE ASSESSMENT AND MANAGEMENT PERFORMANCE  
SYSTEM AND METHOD

Mail Stop Petition  
Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF JOHN W. OLIVO, JR., ESQ. IN SUPPORT OF  
RENEWED PETITION TO REVIVE UNINTENTIONALLY ABANDONED  
PATENT APPLICATION**

I, John W. Olivo, Jr., hereby declare as follows:

1. I am an attorney at the law firm of Ward & Olivo.
  
2. All employees in the docketing department are trained to review correspondences from the USPTO and determine a date, if any, for submitting a response to a particular matter to the USPTO.
  
3. All correspondences from the USPTO are sent to the docketing department upon receipt for entry into a docketing system.

4. Dates for submitting a response are entered into the docketing system.
5. On or around November 18, 2004, the firm of Ward & Olivo received a Notice to File Missing Parts of Nonprovisional Application from the USPTO in connection with the above-referenced application. This date was docketed into the docketing system.
6. On or around December 2, 2004, a response to the November 18, 2004 Notice to File Missing Parts of Nonprovisional Application was submitted to the USPTO via first class mail.
7. A response to the Notice of Incomplete Reply (Nonprovisional) from the USPTO was inadvertently not filed. At no time did the applicant intend to abandon the application or state that she wished to abandon the application. Therefore, the abandonment was unintentional.
8. On or about October 31, 2007, the applicant called Ward & Olivo to inquire about the status of the present application. I checked the status of the application and determined that the application's current status was abandoned. I had no knowledge that the application had been abandoned.
9. On November 12, 2007, I submitted a Petition For Revival of an Application for Patent Abandoned Unintentionally under 37 C.F.R. 1.137(b) of the present application.

10. On August 7, 2008, the Office of Petitions rejected the Petition for Revival of an Application for Patent Abandoned Unintentionally under 37 C.F.R. 1.137(b) of the present application.

11. On December 30, 2008, the attached Renewed Petition Under 37 C.F.R. 1.137(b) and Declarations In Support Of Renewed Petition were filed with the USPTO.

12. Therefore, the abandonment of the application was unintentional.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: December 30, 2008

Respectfully Submitted,

John W. Olivo, Jr.  
Reg. No. 35,634  
**WARD & OLIVO**  
382 Springfield Ave.  
Summit, NJ 07901  
908-277-3333



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Diane Nerby

Group Art Unit: 2171

Serial No.: 10/678,048

Examiner: TBD

Filed: October 2, 2003

Atty. Doc. No.: 927-001

For: ONLINE EMPLOYEE ASSESSMENT AND MANAGEMENT PERFORMANCE  
SYSTEM AND METHOD

Mail Stop Petition  
Honorable Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF JAMIE REINHARDT IN SUPPORT OF  
RENEWED PETITION TO REVIVE UNINTENTIONALLY ABANDONED  
PATENT APPLICATION**

I, Jamie Reinhardt, hereby declare as follows:

1. I am an employee in the docketing department and am currently responsible for docketing at the law firm of Ward & Olivo. I was hired on May 18, 2005 to replace a former employee responsible for docketing.
  
2. All employees in the docketing department are trained to review correspondences from the USPTO and determine a date, if any, for submitting a response to a particular matter to the USPTO.
  
3. All correspondences from the USPTO are sent to the docketing department upon

receipt for entry into a docketing system.

4. Dates for submitting a response are entered into the docketing system.

5. It is my understanding, based on a review of the docketing system, that on or around November 18, 2004, the firm of Ward & Olivo received a Notice to File Missing Parts of Nonprovisional Application from the USPTO in connection with the above-referenced application. This date was docketed into the docketing system.

6. It is also my understanding, based on my review of the system, that on or around December 2, 2004, a response to the November 18, 2004 Notice to File Missing Parts of Nonprovisional Application was submitted to the USPTO via first class mail.

7. It is also my understanding, based on my review of the system, that on or around December 16, 2004, the firm of Ward & Olivo received a Notice of Incomplete Reply (Nonprovisional) from the USPTO in connection with the above-referenced application for failing to include all of the items required in the November 18, 2004 Notice to File Missing Parts of Nonprovisional Application in the December 2, 2004 response. The due date was erroneously docketed in the docketing system as a date in the past. Therefore, this date never showed up on a future docket report at any time.

8. On or about April 24, 2006, the firm of Ward & Olivo received a Notice of Abandonment under 37 C.F.R 1.53(f) or (g) from the USPTO in connection with the

above-referenced application for failure to timely or properly reply to the Notice to File Missing Parts mailed on or around November 18, 2004. This date was docketed into the docketing system.

9. A response to the Notice of Abandonment under 37 C.F.R. 1.53(f) or (g) from the USPTO was inadvertently not filed. At no time was I informed that the client intended to abandon the application.

10. Therefore, the abandonment of the application was thus unintentional.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: December 30, 2008

Respectfully Submitted,

*Jamie Reinhardt*  
Jamie Reinhardt  
**WARD & OLIVO**  
382 Springfield Ave.  
Summit, NJ 07901  
908-277-3333